

### **Remarks**

This is in response to the first Office Action mailed September 29, 2004. The Applicant has hereinabove updated the specification with application numbers of related copending applications.

With respect to the claims, independent claims 1 and 14 have been amended to clarify, without narrowing, the claimed subject matter. Claim 20 has been amended to correct a typographical error. New claims 21-24 have also been added. These amendments are proper, do not introduce new matter, and serve to place the application in proper condition for reconsideration and allowance.

### **Rejection of Claims Under 35 U.S.C. §102**

The first Office Action rejected claims 1-2, 4-5, 9-10, 13-15 and 17-19 under 35 U.S.C. §102(e) as being anticipated by U.S. Published Patent Application No. US2003/0179489 filed by Bennett et al. ("Bennett '489"). This is respectfully traversed. The patentability of independent claims 1 and 14 will be discussed first, followed by a discussion of the patentability of independent claim 13.

#### **1. Independent Claims 1 and 14**

With regard to independent claims 1 and 14, Bennett '489 fails to disclose "a compressive gasket seal compressed *by* the first and second housing members." Bennett '489 further fails to disclose the removeable compression limit spacer as "*limiting said compression* of the gasket seal to a predetermined compression level."

In framing the rejection, the Examiner identified the recited first and second housing members as the base 102 and the sealing cover 150 in Bennett '489. A deficiency with this characterization is that the gasket 170 in Bennett '489 is compressed between, but not by, the base 102 and sealing cover 150. Rather, the gasket 170 is compressed by the base 102 and the structural cover 104 using a plurality of screws 166 which attach the structural cover 104 to the base 102. See e.g., paragraph 0029. This provides the housing with a "short term" hermetic seal for purposes of operational certification of the assembly. See e.g., paragraphs 0033 and 0054.

Once this certification process is satisfactorily completed, the sealing cover 150 is subsequently placed over the structural cover 104 and attached to the base 102 using adhesive (FIGS. 2-3, 7-9) or a soldering joint (FIGS. 4-6). This provides a permanent, "long term" hermetic seal for the service life of the assembly. The sealing cover 150 is relatively thin (preferably on the order of 0.010 inches) and does not operate to compress the gasket 170. See e.g., paragraphs 0042-0044.

The significance of the foregoing is that by characterizing the structural cover 104 in Bennett '489 as the recited "compression limit spacer," this fails to account for the requirement that the first and second housing members compress the gasket; base 102 and sealing cover 150 do not compress gasket 170, as discussed above.

Additionally, this characterization fails to account for the requirement that the compression limit spacer limit such compression by the first and second housing members; rather, the compression is provided directly by the structural cover 140 and the base 102, after which the sealing cover 150 is adhered to the base 102 over the cover 140.

As mentioned above, the change of “between” to “by” in claims 1 and 14 is viewed as a clarifying amendment, as one skilled in the art would have readily understood from the original claim language that the first and second members were applying the compressive force to compress the gasket. It is believed that the use of the term “by” as now set forth makes this even more clear and helps to better differentiate over Bennett ‘489 and the other art of record. Thus, this amendment should have no preclusive effect with respect to the range of available equivalents in any subsequent proceedings.

In view of the foregoing, the Applicant submits that independent claims 1 and 14 define structure that is patentable over Bennett ‘489, and requests reconsideration and withdrawal of the rejection of claims 1 and 14, as well as for the claims depending therefrom.

## 2. Independent Claim 13

With regard to independent claim 13, this claim is written in accordance with 35 U.S.C. §112, sixth paragraph, and recites “means for establishing a hermetic seal between the first and second housing members and for limiting *a compression force established by attachment of the first housing member to the second housing member.*”

The structure that carries out the recited means function is identified in the specification as the disclosed gasket seal 140 in combination with the compression limit spacer 142. See e.g., page 13, lines 7-17. The Examiner is accordingly obliged to construe this claim element as this disclosed structure, and structural equivalents thereof. See 35 U.S.C. §112, sixth paragraph; *In re Donaldson Co. Inc.*, 29 USPQ 1845 (Fed. Cir. 1994)(*en banc*).

Since the first and second housing members identified in Bennett '489 (base 102 and sealing cover 150) fail to compress the gasket 170 in the first place, the remaining structure in Bennett '489 (structural cover 140) clearly fails to limit such compression as set forth by the claim. Accordingly, the structure in Bennett '489 cannot be viewed as a structural equivalent and is not encompassed by the claim. See e.g., *Valmont Industries v. Reinke Mfg. Co.*, 25 USPQ2d 1451 (Fed. Cir. 1993). Reconsideration and withdrawal of the rejection of claim 13 is thus respectfully solicited.

#### **Rejection of Claims Under 35 U.S.C. §103**

The first Office Action rejected dependent claims 3 and 16 under 35 U.S.C. §103(a) as being obvious over Bennett '489 in view of U.S. Patent No. 5,793,566 issued to Scura et al. ("Scura '566). Dependent claims 6-7 were rejected under §103(a) as being obvious over Bennett '489 in view of U.S. Patent No. 6,392,838 issued to Hearn et al. ("Hearn '838"). These rejections are respectfully traversed.

First, reconsideration and withdrawal of these rejections are requested on the basis that these dependent claims depend from base claims believed to be patentable for the foregoing reasons.

Additionally, both Bennett '489 and Hearn '838 are co-owned by the assignee of the present application and these references appear to only be available as prior art under section (e) of 35 U.S.C. §102. Thus, pursuant to 35 U.S.C. §103(c), these references are not available under §103(a), and reconsideration and withdrawal of the rejections are requested on this basis as well.

### **Indication of Allowability**

The first Office Action indicated that dependent claims 8, 11-12 and 20 would be allowable if rewritten into independent form. The Applicant gratefully acknowledges this indication of allowability, but has elected to not rewrite the claims as suggested on the basis that the base claims from which these claims depend are believed to be patentable for the foregoing reasons.

### **Newly Added Claims 21-24**

New claims 21-24 have been added. Pursuant to 37 CFR §1.111, claims 21 and 23 generally recite the seal as being directly contacted by each of the respective first and second housing members. Claims 22 and 24 generally recite the compression limit spacer as further directly contacted by each of the respective first and second housing members. Support for these respective limitations is found including in FIGS. 5 and 5-1. It is believed that these limitations further define subject matter that is patentable over the art of record including Bennett '489.

Upon allowance of the present claims, the Applicant requests that the Examiner adjust the sequence of the claims to place dependent claims 21 and 23 ahead of independent claim 13 in the final claim listing.

### **Formal Drawings**

The present application was filed with informal drawings, and formal drawings are now being supplied herewith.

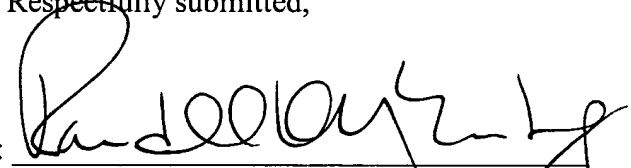
**Conclusion**

The Applicant respectfully requests reconsideration and allowance of all the pending claims in the application. This is intended to be a complete response to the first Office Action mailed September 29, 2004.

Should any questions arise concerning this response, the Examiner is invited to contact the below signed attorney.

Respectfully submitted,

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